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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re J.L., et al., Persons Coming Under the
Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

B208502

(Los Angeles County
Super. Ct. No. CK32490)

APPEAL from an order of the Superior Court of Los Angeles County. Jan Levine,
Judge. Affirmed.

Amy Z. Tobin, under appointment by the Court of Appeal, for Defendant and
Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County
Counsel, and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

J.L.1 (mother) appeals from the March 28, 2008 order terminating her parental rights to three of her four children.¹ She contends the juvenile court erred in rejecting application of the Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i) exception to the statutory preference for adoption (the exception).² We affirm.

FACTUAL AND PROCEDURAL BACKGROUND³

In 1998, a section 300 petition was sustained as to T.M. (born 1988) and J.L. (born 1994), based on findings that mother's boyfriend, K.S., sexually assaulted T.M. While these dependency proceedings were ongoing, mother gave birth to K.S.1 in 1998 and K.S.2 in 2000; K.S. is the alleged father of both children. T.M. and J.L. were eventually returned to mother and juvenile court jurisdiction was terminated in January 2000.

In December 2002, all four children were detained after T.M. reported to a neighbor that K.S. had been continuously sexually assaulting her since she was nine years old. Although T.M. recanted her accusation at the adjudication hearing in October 2003, the juvenile court and the children's counsel did not credit her testimony. Accordingly, the juvenile court sustained an amended section 300 petition, finding true the allegation that K.S. had been sexually assaulting T.M. since she was nine years old, and that mother knew or should have known of the abuse but failed to protect the children (§ 300, subs. (b), (d) & (j)). Because of the previous dependency adjudication, the juvenile

¹ T.M., J.L., K.S.1, and K.S.2 were all declared dependent children in these proceedings. But T.M. turned 18 in 2006. Accordingly, the 2008 order terminated mother's parental rights only to J.L., K.S.1, and K.S.2. We refer to J.L., K.S.1, and K.S.2 collectively as "the younger children."

² All undesignated statutory references are to the Welfare and Institutions Code.

³ The appellate record in this case does not include any copies of the clerk's or reporter's transcript. It appears that the record citations in the parties' briefs are to the record in case No. B206954, an appeal by the alleged father of J.L. (E.L.) from the same order. E.L.'s appeal was dismissed as abandoned pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, 994. We treat the parties' references to the record in case No. B206954 as a request for judicial notice of that record (Evid. Code, § 452, subd. (d)(1)), which we grant.

court ordered that mother receive no reunification services. (§ 361.5, subd. (b)(3) [reunification services need not be provided if the juvenile court finds the child or a sibling has been adjudicated a dependent as a result of the sexual abuse of the child or a sibling].)

After initially being placed with their maternal grandmother, in August 2003, the younger children were placed with foster parents in Lancaster; this couple became their legal guardians in February 2005 (the legal guardians). Meanwhile, mother maintained regular contact with the younger children. After 18 months of monitored visits, mother progressed to unmonitored visits in June 2004 and later to overnight visits. Accordingly, when it appointed the legal guardians, the juvenile court found termination of mother's parental rights would be detrimental to the younger children. In July 2005, the juvenile court terminated its jurisdiction over the younger children, releasing them to the legal guardians.⁴

In January 2006, mother filed a section 388 petition seeking reinstatement of jurisdiction, termination of the legal guardianship, and return of the younger children. The Department of Children and Family Services (the department) report for the April 2006 hearing on mother's petition noted that mother had arrived at the legal guardians' home for a scheduled visit apparently under the influence of alcohol; contrary to court orders, mother allowed K.S. to drive the children back to the legal guardian's home in Lancaster after an unmonitored weekend visit with mother; more than once mother had asked the legal guardians for money, raising doubts about her ability to support them financially; while visiting mother, the children were sometimes left without any adult supervision other than T.M.; and mother's housing situation had become unstable. The juvenile court denied the section 388 petition.

⁴ Meanwhile, T.M. had multiple placements from which she consistently ran away, often returning to mother. In March 2004, T.M. was officially returned to mother and in January 2006, juvenile court jurisdiction was terminated as to T.M., who was within months of her 18th birthday. T.M. continued living with mother, even after she had a child of her own.

By September 2006, the department and legal guardians had become increasingly concerned with mother's supervision of the children. According to a report for a review hearing that month, the younger children told the social worker that J.L. had found a pornographic video on the table and played it. Also, T.M.'s bad behavior in mother's home was creating a "chaotic situation" for the younger children when they visited there. And finally, there was continuing concern that mother was allowing the younger children to be in contact with K.S. (mother denied any contact, explaining that the children were confusing him with J.L.'s father). In October 2006, the department eliminated the overnight visits and limited mother to unmonitored day visits. In November 2006, the social worker learned of a second incident of the younger children viewing a pornographic video while at mother's home. That month, a school nurse referred K.S.2 to the Child Abuse Hotline after he told her he had seen a pornographic video. In January 2007, the legal guardian complained to the social worker that mother was not showing up for scheduled visits with the younger children and was becoming increasingly hostile toward the legal guardian. In February 2007, the younger children told the social worker that during a visit with mother two weeks earlier, she took them to a park with several men the children did not know; the legal guardian confirmed that there were several men in the car when mother brought the children back that day. In March 2007, mother did not oppose the department's petition for an order that mother's visits be monitored once again.

Although the legal guardians had initially declined to adopt the younger children because they were then in the process of adopting other children who had been living with them, in July 2007, the legal guardians told the social worker that they wanted to adopt. When interviewed by the social worker, each of the younger children was enthusiastic about the prospect of adoption by the legal guardians, but also expressed a desire to continue visiting mother. In October 2007, the juvenile court set the matter for a contested section 366.26 hearing in January 2008. That hearing was continued to March because J.L.'s alleged father, E.L., made his first appearance in the action and stated that he might have some American Indian heritage, thus requiring compliance with the Indian

Child Welfare Act. Pending the continued hearing, the department was ordered to arrange visitation for J.L. and E.L. and to prepare a supplemental report on their relationship. After a few sporadic visits with J.L., E.L. asked for a paternity test; he told the social worker that he appeared in the proceedings not because he wanted a relationship with J.L., but because mother asked him to help her stop the adoption from going forward.

The section 366.26 hearing took place on March 27 and 28, 2008.⁵ The juvenile court received into evidence the January 2008 section 366.26 report and the March 2008 supplemental report. According to the January report, mother attended three monitored visits with the younger children and cancelled three others. The visits were not altogether successful because mother caused “the children much distress in that she attempts to continue to talk about the case, despite court orders. It has gotten to the point that a telephone visit had to be terminated recently as the mother, caused the child, [K.S.2] to burst into tears.” The report characterized mother as “highly manipulative with the children.” The department sought to limit mother’s visits to once a month, or even terminate them to protect the children from continued distress.

According to the March report, mother had attended just 20 out of a possible 43 visits during the preceding six months. Not all of those visits went well. For example, at a visit on January 31, mother became agitated and hostile when the social worker terminated the visit after mother refused to comply with the court order that she not discuss the case with the younger children.

At the hearing, J.L. was the only one of the three younger children to testify. He explained that he wanted to be adopted by the legal guardians because he felt comfortable living there, he liked the school he attended, got good grades, and he did not “want to mess it up.” During the five years he had been living with the legal guardians, he went to them when he needed help with anything. J.L. testified that he would like to continue

⁵ On each of those days, mother filed section 388 petitions seeking return of the younger children or, alternatively, reunification services. Both petitions were denied.

seeing mother after he was adopted, but understood that his adopted parents could forbid him from doing so. J.L. answered affirmatively when asked by mother's counsel if he thought it was "okay" for his adoptive parents to decide when he could see mother and T.M. J.L. was also "okay with" his adoptive parents changing his school. J.L. admitted writing a note dated September 22, 2007, which states, "I don't know what adoption means." The note further states, "I want to come back home with my mom, please." J.L. explained that he wrote this note "[b]ecause when – that was when – because my mom asked us what that means. I didn't know what adoption means at first until they told me." Subsequently, adoption was explained to him and at the time of the hearing, he understood what it meant. He no longer wanted to return to mother.

Mother testified that when she visits her children "they run and they love and they're happy to see me, they hug." When she had unmonitored visits, they would go to a park; during monitored visits, she uses her imagination to occupy the children. The first time mother visited her children, they cried when the visit ended and asked when they were coming home. During the course of the dependency case, T.M. had been returned to mother's custody. She has tried to get her other children back, as well.

T.M. testified that she had not been able to visit the younger children recently because she had not been fingerprinted. But when she was visiting them, they were "happy, excited. They say they want to come home. They play with my baby. They love my baby." When the visits ended, the younger children "would be sad or they would cry." T.M. testified that she did not want the younger children adopted because "whatever happened, it happened to me and because of me. I called the police. And it happened to me and I think they should be home with my momma."

Mother's counsel argued that mother's parental rights should not be terminated because this evidence established a bond between mother and the younger children, and it was unclear whether the adoptive parents would allow visits to continue. Counsel argued: "They're very happy when they see their family. They're unhappy when they see their family is leaving. That, Your Honor, should qualify as an exception because they do share a bond."

The juvenile court was not persuaded. It found that the younger children were adoptable and that adoption was in their best interest. Regarding the exception, the court stated: “I am unable to find by a compelling reason that terminating parental rights would be detrimental to the children. . . . [¶] Mother’s visitation has been sporadic. [Since 2002] she has stayed in their lives on and off. She’s been struggling with her other responsibilities. And we went through many months trying to reunify her with all of these children and that opportunity for reunification ended. The time passed before she was in a position to have them be able to come home for a variety of reasons, not the least of which was that the perpetrator of the abuse that caused the case to come into court remained in her life and was exposed to these children. [¶] . . . [¶] . . . The children, on the other hand, have been in a stable home for five years. They feel loved. They see their legal guardian as their mom. They have consistently, when asked, said they want to be adopted. [J.L.’s] testimony shows that he understands fully what the ramifications of adoption are. . . . And the law recognizes that the children should not have to wait for their parents to get their act together to be in a position to provide [a stable home] for the children” The court concluded that the benefits of adoption outweighed any benefit from not terminating mother’s parental rights. Accordingly, it terminated mother’s parental rights as to all three children and ordered adoption as the permanent placement plan.

Mother filed a timely notice of appeal.

DISCUSSION

Mother contends the juvenile court’s rejection of her claim that termination of parental rights would be detrimental to the children is not supported by substantial evidence. She argues that the evidence showed that she regularly visited the children and had a beneficial parental relationship with them that outweighed the benefits of adoption. We conclude substantial evidence supports the juvenile court’s decision.

In California, adoption is the preferred permanent plan for dependent children who cannot be reunited with their parents. (§ 366.26, subd. (b)(1); *In re Celine R.* (2003)

31 Cal.4th 45, 49, 52-53; *In re S.B.* (2008) 164 Cal.App.4th 289, 297; *In re Valerie A.* (2007) 152 Cal.App.4th 987, 997; *In re Dakota H.* (2005) 132 Cal.App.4th 212, 228; *In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) Once the juvenile court finds a dependent child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the statutory exceptions to the preference for adoption. (*In re S.B.*, at p. 297.)

The exception mother argues applies here is that she “[has] maintained regular visitation and contact with the child and the child would benefit from the continuing relationship.” (§ 366.26, subd. (c)(1)(B)(i) [formerly subd. (c)(1)(A)]; *In re Angel B.* (2002) 97 Cal.App.4th 454, 467.) This exception applies when the benefits to the child from continuing the relationship with the parent outweigh the price the child will pay from losing a prospective adoptive family’s permanency and stability. (*In re Jamie R.* (2001) 90 Cal.App.4th 766, 773; *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) Mother must show not just regular contact, but that she plays a parental role in the child’s life. (*In re Andrea R.* (1999) 75 Cal.App.4th 1093, 1108; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419.) In other words, she must establish that she and the children have developed the type of relationship that grows from nearly daily contact when the parent shoulders the child-rearing tasks of day-to-day interaction, companionship and shared experiences. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1534; *In re Casey D.* (1999) 70 Cal.App.4th 38, 51; *In re Beatrice M.*, at p. 1420; *In re Autumn H.*, at p. 575.) The child must benefit from more than the good feelings that typically arise from warm interaction between a child and adult. (*In re Andrea R.*, at pp. 1108-1109.)

If the juvenile court’s rejection of the section 366.26, subdivision (c) exception is supported by substantial evidence, it must be affirmed.⁶ In making this determination,

⁶ We note that courts disagree on the appropriate standard. (See, e.g., *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351 [applying abuse of discretion but finding the practical difference between the two standards not significant because both accord

we review “the evidence most favorably to the prevailing party . . . indulging in all legitimate and reasonable inferences to uphold the court’s ruling. [Citation.]” (*In re S.B.*, *supra*, 164 Cal.App.4th at pp. 297-298.)

Here, substantial evidence supports the juvenile court’s rejection of the exception. While it is true that mother maintained relatively regular contact with the younger children early in the dependency, more recently she had become inconsistent in her visits, missing 23 out of 40 scheduled between October 2007 and March 2008. The quality of these visits began deteriorating as early as April 2006, when it was reported that, among other things, mother arrived at the home of the legal guardians apparently under the influence of alcohol. Mother was allowing K.S. to have unmonitored contact with the younger children while they were in her care. There was also evidence that that the younger children had repeated access to pornographic videos while at mother’s home, prompting a Child Abuse Hotline referral.

Contrary to mother’s assertion, the evidence supports a finding that mother did not play a parental role in the younger children’s lives. The undisputed evidence was that the younger children were thriving in the care of the legal guardians, who provided them with all the practical necessities of life, as well as emotional support. As J.L. testified, he turned to the legal guardians when he needed anything. Mother, on the other hand, caused the younger children unnecessary distress during visits by talking to them about the dependency case in contravention of court orders.

broad deference to the trial court’s ruling.]) We need not resolve the issue here because mother has not shown error under either standard.

DISPOSITION

The judgment is affirmed.

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RUBIN, Acting P. J.

WE CONCUR:

FLIER, J.

BIGELOW, J.